

SOUTH AUSTRALIA

**RESIDENTIAL TENANCIES ACT, 1978**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **6 July 1992**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## RESIDENTIAL TENANCIES ACT, 1978

being

Residential Tenancies Act, 1978, No. 26 of 1978  
[Assented to 30 March 1978]<sup>1</sup>

as amended by

Residential Tenancies Act Amendment Act, 1981, No. 33 of 1981 [Assented to 19 March 1981]<sup>2</sup>

Residential Tenancies Act Amendment Act, 1986, No. 72 of 1986 [Assented to 27 November 1986]

Residential Tenancies Act Amendment Act, 1987, No. 93 of 1987 [Assented to 17 December 1987]

Residential Tenancies Amendment Act 1991 No. 65 of 1991 [Assented to 5 December 1991]<sup>3</sup>

Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>4</sup>

<sup>1</sup> Came into operation 1 December 1978: *Gaz.* 9 November 1978, p. 1477.

<sup>2</sup> Came into operation (except ss. 4, 13(b), 18(b), 19, 31(a), 36 and 40(a)) 16 April 1981: *Gaz.* 16 April 1981, p. 1155; ss. 13(b), 18(b), 19, 31(a), 36 and 40(a) came into operation 3 December 1981: *Gaz.* 3 December 1981, p. 2206; s. 4 came into operation 1 March 1986: *Gaz.* 24 October 1985, p. 1175.

<sup>3</sup> Came into operation 13 January 1992: *Gaz.* 9 January 1992, p. 2.

<sup>4</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

N.B. The amendments effected to this Act by the Residential Tenancies (Housing Trust) Amendment Act 1993 had not been brought into operation at the date of, and have not been included in, this reprint.

*Note:* 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

**An Act to regulate the relationship of landlord and tenant under residential tenancy agreements; to repeal the Excessive Rents Act, 1962-1973; and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Residential Tenancies Act, 1978*.

**Commencement**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Arrangement of Act**

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—ADMINISTRATION

PART III—THE RESIDENTIAL TENANCIES TRIBUNAL

PART IV—RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT

DIVISION I—RENT

DIVISION II—GENERAL

PART V—TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

PART VI—RESIDENTIAL TENANCIES FUND

PART VII—MISCELLANEOUS.

**Repeal of Excessive Rents Act**

4. The following Acts and portions of Acts are repealed:—

(a) the *Excessive Rents Act, 1962*;

(b) the *Excessive Rents Act Amendment Act, 1965-1966*;

(c) Part III of the *Statutes Amendment (Housing Improvement and Excessive Rents) Act, 1966*;

and

(d) so much of the second schedule to the *Statute Law Revision Act, 1973*, as relates to the *Excessive Rents Act, 1962-1966*.

**Interpretation**

5. In this Act, unless the contrary intention appears—

"the Commissioner" means the Commissioner for Consumer Affairs appointed under the *Prices Act, 1948-1976*:

3.

"declared area" means an area declared by notice published in the *Gazette* under Part III of this Act to be a declared area:

"the Fund" means the Residential Tenancies Fund established under Part VI of this Act:

"landlord" means the grantor of a right of occupancy under a residential tenancy agreement or his successor succeeding subject to the interest of the tenant:

"premises" includes—

(a) any part of premises;

and

(b) land and appurtenances appurtenant to premises:

"registered housing co-operative" means a housing co-operative registered under the *Housing Co-operatives Act 1991*:

"rent" means a payment under a residential tenancy agreement payable by the tenant in respect of a period of the tenancy:

"residential premises" means premises that constitute or are intended to constitute a place of residence:

"residential tenancy agreement" means any agreement, whether express or implied, under which any person for valuable consideration grants to any other person a right to occupy, whether exclusively or otherwise, any residential premises or part of residential premises for the purpose of residence:

"security bond" means an amount payable by a tenant as security for the performance of his obligations under a residential tenancy agreement:

"tenancy" means the right of occupancy under a residential tenancy agreement:

"tenant" means the grantee of a right of occupancy under a residential tenancy agreement or his legal representative, heir or assign:

"the Tribunal" means the Residential Tenancies Tribunal established under Part III of this Act.

#### **Application of Act to the Crown**

6. (1) Subject to subsection (2), this Act binds the Crown.

(2) This Act does not apply to any residential tenancy agreement entered into by the South Australian Housing Trust constituted under the *South Australian Housing Trust Act, 1936-1973*.

#### **Application of Act**

7. (1) Subject to this section, this Act applies to any residential tenancy agreement entered into, renewed, assigned or otherwise transferred after the commencement of this Act.

4.

(2) This Act does not apply to any residential tenancy agreement—

(a) where the tenant is a party to an agreement for the sale and purchase of the premises;

(b) where the agreement arises under a mortgage in respect of the premises;

(c) where the agreement arises under a scheme under which—

(i) a group of adjacent premises is owned by a company;

and

(ii) the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company;

(d) where the tenant is a boarder or lodger;

or

(e) where the agreement is a prescribed agreement, or is an agreement of a prescribed class.

(2a) This Act does not apply to or in relation to any agreement *bona fide* entered into for the purpose of conferring on a person a right to occupy premises for a holiday.

(2b) For the purposes of subsection (2a), an agreement conferring a right to occupy premises for a fixed term of two months or longer, shall be deemed, in the absence of proof to the contrary, not to have been entered into *bona fide* for the purpose of conferring a right to occupy the premises for a holiday.

(3) This Act does not apply to or in relation to—

(a) any part of a hotel or motel;

\* \* \* \* \*

(c) any part of an educational institution, college, hospital or nursing home;

(d) any premises used for the purposes of a club;

(e) any premises used as a home for aged or disabled persons by an eligible organization within the meaning of the *Aged or Disabled Persons Homes Act, 1954*, as amended, of the Commonwealth;

(f) any prescribed premises or premises of a prescribed class.

#### **Application of Act to certain periodic tenancies**

**7a.** (1) Where a residential tenancy agreement was entered into before the commencement of this Act and continues after the commencement of this section and the tenancy under the agreement is a periodic tenancy, this Act shall, subject to any other provisions of this Act, apply to the agreement on and from the first day after the commencement of this section on which rent is payable under the agreement.

5.

(1a) Where a residential tenancy agreement to which the Crown is a party was entered into before the commencement of section 6 and continues after the commencement of this subsection and the tenancy under the agreement is a periodic tenancy, this Act shall, subject to any other provisions of this Act, apply to the agreement on and from the first day after the commencement of this subsection on which rent is payable under the agreement.

(2) Where this Act has application to a residential tenancy agreement by virtue of this section—

- (a) any proceedings commenced in relation to the agreement before that application may be continued and completed as if this Act had not been enacted;
- (b) any notice to quit given in relation to the agreement before that application shall have effect and may be enforced as if this Act had not been enacted;
- (c) any process commenced before that application, being a process whereby the rent may be increased under the agreement, may be continued and completed and shall have effect to increase the rent as if this Act had not been enacted, but subject to any order under section 36;
- (d) proceedings may be brought subject to and in accordance with this Act in respect of any cause of action that arose before that application, not being a cause of action subject to proceedings at the time of that application;

and

- (e) no civil or criminal liability shall be incurred by virtue of that application in respect of any act or omission before that application.

**Modification of application of Act by regulation**

8. The Governor may by regulation provide that a provision of this Act shall not apply to or in relation to any residential tenancy agreement or class of residential tenancy agreements or any premises or class of premises or shall apply in a modified manner.

PART II

ADMINISTRATION

**Administration of Act**

9. The Commissioner shall have the general administration of this Act and shall, in the administration of this Act, be subject to any directions of the Minister.

**Delegation by Commissioner**

10. (1) The Commissioner may by notice published in the *Gazette* delegate any of his powers under this Act to the holder of any specified office in the public service of the State or to any specified officer of an agency or instrumentality of the Crown.

(2) Where any powers are delegated by notice under this section they shall be exercised by the delegate in accordance with any conditions specified in the notice.

(3) A delegation under this section may be revoked by the Commissioner by notice published in the *Gazette* and shall not prevent the exercise of any powers by the Commissioner himself.

**Powers and functions of Commissioner under this Act**

11. (1) The Commissioner shall have the following functions for the purposes of this Act:

- (a) the investigation of and conduct of research into aspects of and matters relating to or affecting the interests of parties to residential tenancy agreements generally or any particular party or parties;
- (b) the publication of reports, the dissemination of information and the taking of such steps as he thinks proper for informing the public of matters relating to or affecting the interests of parties to residential tenancy agreements;
- (c) the giving of such advice to persons on the provisions of this Act or any other law relating to or affecting the interests of parties to residential tenancy agreements as he thinks proper;
- (d) the investigation, upon the complaint of a party to a residential tenancy agreement or otherwise, of an offence against this Act or of infringement of a party's rights arising out of any residential tenancy agreement and the taking of such action by negotiation, prosecution of such offence or otherwise as in his opinion is appropriate and proper;
- (e) the making of reports to the Minister on matters referred to him by the Minister and matters of importance investigated by him, whether referred to him by the Minister or not.

(2) The Commissioner may, upon being satisfied that there is a cause of action and that it is in the public interest, on behalf of any party to a residential tenancy agreement, where in the case of that party being a landlord, the Commissioner is in addition satisfied that the landlord is in necessitous circumstances, institute legal proceedings against any other person or defend any proceedings brought against the party or assume the conduct of proceedings already commenced by or against the party, with a view to enforcing or protecting the rights of the party in relation to any infringement or suspected infringement by that other person of those rights or of any of the provisions of this Act or other law relating to the interests of such parties.

7.

(3) Notwithstanding the provisions of subsection (2) of this section, the Commissioner may, if he considers it appropriate, on behalf of any tenant, institute proceedings or assume the conduct of proceedings already commenced by the tenant for a determination by the Tribunal under Division I of Part IV of this Act as to whether the rent payable by the tenant in respect of the premises, the subject of the residential tenancy agreement, is excessive.

(4) The Commissioner shall not institute, defend or assume the conduct of, any proceedings pursuant to subsection (2) or (3) of this section without first—

- (a) obtaining the written consent of the party which once given shall be irrevocable except with the consent of the Commissioner;

and

- (b) obtaining the written consent of the Minister which may be given subject to such conditions as the Minister thinks fit.

(5) In relation to any proceedings referred to in subsection (2) or (3) of this section the following provisions shall apply—

- (a) the Commissioner shall, on behalf of the party to the residential tenancy agreement, have in all respects the same rights in, and control over, the proceedings, including the right to settle any action or part of any action, as the party would have had in the conduct of those proceedings;
- (b) the Commissioner may, without consulting or seeking the consent of the party, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
- (c) in the case of proceedings already commenced by or against the party, the Tribunal or court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the party as a party to the proceedings, and may make such other orders or give such other directions in that behalf as it thinks fit;
- (d) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the party without deduction and any amount awarded against the party shall be paid by and recoverable from the party, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require;

and

- (e) if any party to the proceedings alleges another cause of action, or if the party on whose behalf the proceedings are being defended has another cause of action, the Tribunal or court hearing the proceedings shall, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party be a party to those proceedings in his own right and may make such other orders or give such other directions in that behalf as it thinks fit.

8.

(6) In any proceedings referred to in subsection (2) of this section, a document purporting to be signed by the Commissioner stating in respect of the proceedings that he is satisfied that there is a cause of action and that it is in the public interest to institute, defend or assume the conduct of the proceedings, as the case may be, on behalf of the party to the residential tenancy agreement shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted, defended or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.

(7) In any proceedings referred to in subsection (3) of this section, a document purporting to be signed by the Commissioner stating in respect of the proceedings that he considers it appropriate to institute or assume the conduct of the proceedings, as the case may be, on behalf of the tenant shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted or assumed the conduct of the proceedings, as the case may be, in accordance with that subsection.

(8) In any proceedings referred to in subsection (2) or (3) of this section—

(a) a document purporting to be the consent of the party to the residential tenancy agreement to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be;

or

(b) a document purporting to be the Minister's consent to the Commissioner instituting, defending or assuming the conduct of the proceedings, as the case may be,

shall, in the absence of proof to the contrary, be accepted as proof of the matters referred to in the document.

(9) Any money which the Commissioner becomes liable to pay by virtue of this section shall be paid out of the General Revenue of the State and this Act, without any further appropriation, shall be sufficient authority for any such payment.

(10) The Commissioner may co-operate, collaborate or consult with officers of any department or instrumentality of the Crown in right of the State, or any other State or the Commonwealth or with any organization or body wherever situated, which is concerned with the interests of parties to residential tenancy agreements, or with any person who has a special knowledge of any aspect of the rights and interests of such parties.

(11) In this section "tenant" includes a prospective tenant or former tenant and "party" in relation to a residential tenancy agreement includes a person who is prospectively or was formerly a party to such agreement.

(12) Notwithstanding the provisions of this section, the Commissioner may not exercise any power conferred upon him under this section in relation to a residential tenancy agreement that has terminated upon the complaint of a person who was a party to that agreement unless the complaint is made within a period of three months after termination of the residential tenancy agreement.

**Immunity of the Commissioner and his delegates**

**12.** No liability shall attach to the Commissioner, or any delegate of the Commissioner, for any act or omission by the Commissioner, or the delegate, in good faith and in the exercise, or purported exercise, of the powers or functions of the Commissioner, or in the discharge or purported discharge, of the Commissioner's duties, under this Act.

**Annual report**

**13.** (1) The Commissioner shall, as soon as practicable after the thirtieth day of June in each year, submit to the Minister a report upon the administration of this Act during the year ending on that day.

(2) The Minister shall cause the report of the Commissioner to be laid before each House of Parliament as soon as practicable after his receipt thereof.

PART III

THE RESIDENTIAL TENANCIES TRIBUNAL

**Residential Tenancies Tribunal**

**14.** (1) There shall be a tribunal entitled the "Residential Tenancies Tribunal".

(2) The Governor may appoint a person to be a member of the Tribunal.

(2a) The Governor may appoint a member of the Tribunal who is a legal practitioner to be Chairman of the Tribunal.

(2b) The office of the Chairman of the Tribunal may be held in conjunction with any office in the Public Service of the State.

(3) A person appointed to be a member of the Tribunal shall be appointed for a term of office not exceeding five years and upon such conditions as the Governor may determine and specify in the instrument of his appointment and, upon the expiration of his term of office, shall be eligible for reappointment.

(4) The Governor may appoint a suitable person to be the deputy of a member of the Tribunal, and such a person while acting in the absence of the member shall have all his powers, authorities, duties and obligations.

(5) The Governor may remove a member of the Tribunal from office for—

(a) any breach of, or non-compliance with, the conditions of his appointment;

(b) mental or physical incapacity;

(c) dishonourable conduct;

or

(d) neglect of duty.

(6) The office of a member of the Tribunal shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (5) of this section.

(7) Upon the office of a member of the Tribunal becoming vacant, a person may be appointed, in accordance with this Act, to the vacant office.

**Remuneration and expenses**

15. A member of the Tribunal shall be entitled to receive such remuneration and expenses, if any, as the Governor may determine.

**Registrars**

16. (1) The Governor may, subject to and in accordance with the *Public Service Act, 1967-1975*, appoint a person to be the registrar or a deputy registrar of the Tribunal.

(2) The office of registrar or deputy registrar of the Tribunal may be held in conjunction with any other office in the public service of the State.

**Registrar may exercise jurisdiction of Tribunal in certain matters**

17. The registrar or a deputy registrar of the Tribunal may, subject to any directions of the Chairman of the Tribunal, exercise the jurisdiction of the Tribunal in respect of any matters of a prescribed class.

**Immunity of members and registrars of Tribunal**

18. No liability shall attach to a member of the Tribunal or the registrar or a deputy registrar of the Tribunal for any act or omission by him in good faith and in the exercise, or purported exercise, of his powers or functions, or in the discharge, or purported discharge, of his duties, under this Act.

**Declared areas**

19. (1) The Minister may, by notice published in the *Gazette*, declare an area of the State specified in the notice to be a declared area.

(2) Where the Minister, by notice under subsection (1) of this section, declares an area of the State to be a declared area, he shall, in the notice, designate the area by a distinctive name.

(3) The Minister may, by notice published in the *Gazette*, revoke or vary a notice under subsection (1) of this section.

**Constitution and times and places for proceedings of Tribunal**

20. (1) The Tribunal shall in respect of any proceedings be constituted by one or more members of the Tribunal at the direction of the Chairman of the Tribunal.

(2) There shall be an office of the Tribunal and where areas are declared under section 19 of this Act there shall be an office of the Tribunal within each declared area.

(3) Any proceedings to be brought before the Tribunal must be instituted at the office of the Tribunal and where areas are declared under section 19 of this Act any proceedings to be brought before the Tribunal must be instituted at the office of the Tribunal for the declared area within which the premises the subject of the proceedings are situated.

\* \* \* \* \*

(5) The Tribunal shall sit to hear proceedings at such times and places as the Minister directs.

(6) Different proceedings of the Tribunal may be heard contemporaneously by the Tribunal at different places.

(7) The Tribunal shall hear and determine proceedings under this Act wherever practicable within fourteen days after they are instituted and, where that is not practicable, as expeditiously as possible.

### **Jurisdiction of Tribunal**

**21.** (1) Subject to this section, the Tribunal shall have exclusive jurisdiction to hear and determine any matter that may be the subject of an application to it under this Act.

(2) The Tribunal shall not have jurisdiction to hear and determine any monetary claim where the amount claimed exceeds \$25 000 unless the parties to the proceedings consent in writing (which consent shall be irrevocable) to the claim being heard and determined by the Tribunal.

(3) Where pursuant to subsection (2) of this section, the Tribunal does not have jurisdiction to hear and determine a monetary claim, the claim shall be justiciable by a court competent to hear and determine a claim founded on contract for the amount of that claim.

(4) Where in any action in a court having jurisdiction pursuant to subsection (3) of this section the plaintiff recovers an amount less than the amount referred to in subsection (2) of this section, the plaintiff shall not be awarded any costs unless the court is satisfied that at the time of instituting the proceedings there were reasonable grounds for the plaintiff to believe that he had a claim for an amount exceeding the amount referred to in subsection (2) of this section.

### **Powers of Tribunal**

**22.** (1) Where a landlord or tenant under a residential tenancy agreement or a party to an agreement for an option to enter into a residential tenancy agreement claims that a breach of the agreement has occurred or that a dispute has arisen under the agreement, he may apply to the Tribunal and upon such application the Tribunal may—

(a) by such order as it considers appropriate in the circumstances—

(i) restrain any action in breach of the agreement;

or

(ii) require any action in performance of the agreement;

(b) order the payment of any amount payable under the agreement;

(c) order the payment of compensation for loss or injury, other than personal injury, caused by any breach of the agreement;

(d) authorize payment of the rent under the agreement into the Tribunal until the agreement has been performed or any application for compensation has been determined and, where appropriate, order that such rent be paid out towards the cost of remedying the breach or towards the amount of any compensation;

and

(e) make such ancillary or incidental order as the Tribunal considers appropriate in the circumstances.

(2) The Tribunal may make an order under paragraph (a) of subsection (1) of this section notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such remedy would not otherwise be available.

(3) If a person fails, without reasonable excuse, to comply with an order under subsection (1) of this section other than an order for payment of any amount, he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(4) Where any order is made by the Tribunal requiring a person to pay an amount to another person, the registrar or a deputy registrar of the Tribunal shall, upon application by that other person, issue a certificate of the order in the prescribed form which certificate may be registered at the local court nearest to the premises the subject of the residential tenancy agreement or nearest to the place where that firstmentioned person resides.

(5) A certificate registered at a local court under subsection (4) of this section shall, upon registration, have the same force and effect and the same proceedings may be brought upon it as if it were a judgment or order of that local court.

(6) The powers conferred by section 28 of the *Local and District Criminal Courts Act, 1926-1976*, include power to make rules regulating the practice and procedure relating to the registration of certificates under this section and proceedings upon such certificates and imposing court fees thereon.

#### **Application to vary or set aside order**

**22a.** (1) A person who is or was a party to any proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order made in those proceedings.

(2) An application to vary or set aside an order, other than an order under section 91, must be made within three months of the making of the order.

#### **Application to Tribunal**

**23.** (1) Any application under this Act to the Tribunal must—

(a) be made in writing;

(b) contain the prescribed particulars;

and

(c) be accompanied by the prescribed fee if any.

(2) Before the Tribunal proceeds to hear an application it shall first—

(a) give the applicant notice in writing setting out the time and place at which it will hear the application;

and

14.

- (b) give to any other party—
  - (i) notice in writing setting out the time and place at which it will hear the application;

and

- (ii) such notice of the nature of the application as it thinks fit.

### **Proceedings of Tribunals**

**24.** (1) For the purpose of any proceedings, the Tribunal may—

- (a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person;
- (b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require any person appearing before the Tribunal to make an oath or affirmation that he will truly answer any relevant questions put to him by the Tribunal or any person appearing before the Tribunal;
- (e) require any person appearing before the Tribunal (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Tribunal or any person appearing before the Tribunal.

(2) If any person—

- (a) fails without reasonable excuse to comply with the requirements of a summons served upon him under subsection (1) of this section;
- (b) refuses or fails to comply with a requirement of the Tribunal under subsection (1) of this section;

or

- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(4) In any proceedings the Tribunal may—

- (a) hear the application in such manner as the Tribunal considers best suited to that purpose;
- (b) decline to entertain the application if it considers that the application is frivolous;

- (c) proceed to hear and determine the application in the absence of any party thereto;
- (d) extend any period prescribed by or under this Act within which any application or other step in respect of proceedings must be made or taken notwithstanding that that period has expired;
- (e) vary or set aside any order where the Tribunal considers there are proper grounds for doing so;
- (f) adjourn the hearing to any time or place or to a time and place to be fixed;
- (g) allow the amendment of the application;
- (h) hear the application jointly with any other application;
- (i) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper;
- (j) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings;

and

- (k) generally give all such directions and do all such things as it deems necessary or expedient in the proceedings.

(5) In any proceedings the Tribunal shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as it thinks fit.

(6) The Tribunal may, on the application of the South Australian Co-operative Housing Authority, allow the Authority to intervene in any proceedings before the Tribunal.

(7) The Authority may only be allowed to intervene if the Tribunal is satisfied that it is fair and reasonable that the Authority participate in the proceedings.

(8) If the Authority is allowed to intervene in any proceedings, it may intervene in the manner and to the extent directed by the Tribunal, and on such other conditions as the Tribunal may direct.

#### **Presentation of cases before Tribunal**

**25.** (1) Except as provided in this section, a party to any proceedings before the Tribunal shall present his own case and not be represented or assisted in the presentation of his case by another person.

(2) A party to any proceedings before the Tribunal may be represented by an agent or assisted by an agent in the presentation of his case if the Tribunal is satisfied—

- (a) that—
  - (i) the party is unable to appear personally or conduct the proceedings properly himself;

and

- (ii) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act;

or

- (b) where the party is a landlord, that the agent is the agent of the landlord appointed at or before the time at which the residential tenancy agreement was entered into to manage the premises the subject of the proceedings on behalf of the landlord.

(3) All or any of the parties to any proceedings before the Tribunal may be represented by legal practitioners if—

- (a) all the parties agree and the Tribunal is satisfied that any party who is not so represented will not be unfairly disadvantaged;
- (b) one of the parties is a legally qualified person;
- (c) one of the parties is a body corporate and any other party elects to be so represented;
- (d) the Tribunal is satisfied that one of the parties is unable to appear personally or conduct the proceedings properly himself;

or

- (e) the proceedings are instituted or defended or the conduct thereof has been assumed by the Commissioner.

(4) This section does not prevent—

- (a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorized to conduct the proceedings on its behalf (whether or not he is remunerated by the body corporate for representing it in the proceedings);

or

- (b) a person from acting as an interpreter for a party provided that his fee does not exceed an amount fixed by the Tribunal at the hearing.

(5) A person shall not demand or receive any fee or reward for representing or assisting a party to proceedings before the Tribunal unless—

- (a) he is a legal practitioner;
- (b) where the party is a body corporate, he is an officer or employee of the body corporate representing it under subsection (4) of this section;

or

- (c) where the party is a landlord, he is the agent of the landlord appointed to manage the premises the subject of the proceedings on behalf of the landlord.

Penalty: Five hundred dollars.

- (6) In this section—

"agent" means any person who is not a legally qualified person:

"legally qualified person" means a legal practitioner, an articled law clerk, or any person who holds or has held legal qualifications under the laws of this State or any other place.

### **Settlement of proceedings**

**26.** (1) If before or during the hearing of any proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, the person constituting the Tribunal may—

- (a) interview the parties in private (either with or without any person who may be representing any of them or assisting any of them in the presentation of his case);

and

- (b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of any attempt to settle proceedings, under this section shall subsequently be given in evidence in any proceedings nor shall the person constituting the Tribunal be thereby disqualified from hearing or continuing to hear the proceedings if he thinks fit to do so.

(3) Where proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

### **Costs**

**27.** In any proceedings the Tribunal shall not award costs, unless—

- (a) all parties to the proceedings were represented by legal practitioners;

or

- (b) the Tribunal is of the opinion that there are special circumstances justifying the award of costs.

### **Reservation of question of law**

**28.** (1) The Tribunal may reserve any question of law for the decision of the Supreme Court, whose decision shall be certified to and binding on the Tribunal.

(2) Any costs arising from the reservation of any question under this section, including any costs incurred by the parties to the proceedings, shall be paid out of the General Revenue of the State and this Act, without any further appropriation, shall be sufficient authority for any such payment.

**Appeal to Local Court of full jurisdiction**

**29.** (1) Subject to subsection (2) of this section, a right of appeal shall lie to a Local Court of full jurisdiction within the meaning of the *Local and District Criminal Courts Act, 1926-1976*, against any order or decision of the Tribunal made in the exercise or purported exercise of its powers under this Act.

(2) A right of appeal shall not lie in respect of any monetary claim where the amount claimed is less than one thousand dollars.

(3) The appeal must be instituted within one month of the making of the decision or order appealed against.

(4) The Local Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

(5) The Tribunal shall, if so required by any person affected by a decision or order made by it, state in writing the reasons for its decision or order.

(6) If the reasons of the Tribunal are not given in writing at the time of making a decision or order and the appellant then requested the Tribunal to state its reasons in writing, the time for instituting the appeal shall run from the time when the appellant receives the written statement of those reasons.

(7) Where an order has been made by the Tribunal and the Tribunal or Local Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(8) Where the Tribunal has suspended the operation of an order under subsection (7) of this section, the Tribunal may terminate the suspension, and where the Local Court has done so, the Local Court may terminate the suspension.

(9) The powers conferred by section 28 of the *Local and District Criminal Courts Act, 1926-1976*, include power to make rules regulating the practice and procedure in respect of appeals made under this section and imposing court fees with respect thereto.

(10) Any decision or order made by the Local Court under this section shall be final and binding on all parties to the proceedings in which the decision or order is made and no further appeal shall lie with respect thereto.

PART IV

RIGHTS AND OBLIGATIONS OF LANDLORD AND TENANT

DIVISION I—RENT

**Consideration for tenancy agreement to be rent and security bond only**

**30.** (1) Subject to subsection (2), a person shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than rent and a security bond.

Penalty: Two hundred dollars.

(2) Subsection (1) does not apply to—

- (a) any amount required or received as consideration for an option to enter into a residential tenancy agreement if, upon the option being exercised, the amount is refunded or applied towards the rent payable under the agreement;
- (b) any amount that the landlord is authorized by any other provision of this Act to require or receive;

or

- (c) any payment of a prescribed class.

**Rent in advance**

**31.** (1) A person shall not require before or during the first two weeks of the tenancy under a residential tenancy agreement as rent under the agreement an amount exceeding two weeks' rent under the agreement.

Penalty: Two hundred dollars.

(2) A person shall not require any payment of rent (other than the first payment) under a residential tenancy agreement until the period of the tenancy in respect of which any previous payment has been made has elapsed.

Penalty: Two hundred dollars.

**Security bond**

**32.** (1) A person shall not—

- (a) require the payment of, or receive, more than one security bond in relation to any residential tenancy agreement;

or

- (b) require the payment of, or receive, a security bond of an amount exceeding four weeks' rent under the residential tenancy agreement in relation to which it is required or received.

Penalty: Two hundred dollars.

(1a) Subsection (1)(b) does not apply in relation to a residential tenancy agreement where the weekly rate of rent payable under the agreement exceeds the prescribed amount.

(1b) Where, during the period of six months after the day on which the tenancy under a residential tenancy agreement commenced, the rent payable under the agreement decreases or is decreased, the amount paid in excess of the lower or, as the case may be, lowest rate of rent payable under the agreement during that period shall be deemed to have been paid as a security bond.

(2) A person who receives a security bond paid in relation to a residential tenancy agreement—

- (a) shall forthwith give or cause to be given to the person paying the bond a receipt specifying the date, on which the bond was received, the name of the person paying the bond, the amount paid and the premises in respect of which it is paid;

and

- (b) shall pay the security bond to the Tribunal within seven days of his receipt thereof or, in the case of a licensed agent within the meaning of the *Land and Business Agents Act, 1973-1975*, within twenty-eight days of his receipt thereof.

Penalty: Five hundred dollars.

### **Payment of security bonds by Tribunal to landlord or tenant**

**33.** (1) The Tribunal may, upon application by either party to a residential tenancy agreement, with the consent of both parties to the agreement, order that a security bond paid in respect of the agreement be paid out in accordance with the directions of the parties.

(2) An application under subsection (1) of this section shall be made and determined in the prescribed manner and section 23 of this Act shall not apply in relation thereto.

(3) Subject to this section, the Tribunal may, upon application by a landlord or a tenant under a residential tenancy agreement, order that the amount of any security bond paid in respect of the residential tenancy agreement be paid to the tenant in full, or, where the Tribunal is satisfied that the tenant is liable to pay an amount to the landlord by reason of a breach of a term of the agreement, that the amount of the security bond be applied in payment of, or towards, that amount and the balance, if any, be paid to the tenant.

(3a) Where a person makes an application under subsection (3), the provisions of section 23(2) shall not apply but the Tribunal shall give to the other party to the residential tenancy agreement notice in writing of the application inviting him to indicate by notice in writing in the prescribed form lodged with the Tribunal within ten days after service of the Tribunal's notice whether he intends to dispute the application.

(3b) Notwithstanding any other provisions of this Act, where—

(a) a person makes an application under subsection (3) and notice has been given to the other party in accordance with subsection (3a);

and

(b) that other party does not within ten days after service of that notice lodge with the Tribunal a notice in writing in the prescribed form indicating that he intends to dispute the application,

the Tribunal may, without conducting a formal hearing, order payment in accordance with the application.

(3c) If the other party indicates in the manner referred to in subsection (3b) that he intends to dispute the application, section 23(2) and the other provisions of this Act relating to proceedings of the Tribunal shall thereupon apply in relation to the application.

(4) A tenant may not make an application under subsection (3) of this section before the termination of the residential tenancy agreement.

#### **Variation of rent**

**34.** (1) Subject to this section, the rent payable under a residential tenancy agreement may be increased by the landlord by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, being a day—

(i) not less than sixty days after the day on which the notice is given;

and

(ii) not less than six months after the day on which the tenancy commenced, or, if the rent has been increased under this section, the day on which it was last so increased,

but otherwise the rent shall not increase or be increased.

(2) The right of the landlord to increase rent in accordance with subsection (1) of this section—

(a) is not exercisable in relation to an agreement that creates a tenancy for a fixed term during the currency of that term unless the agreement provides that the rent may increase or be increased;

and

(b) in any case, may be excluded or limited by agreement between the landlord and the tenant.

(2a) Notwithstanding the provisions of this section, where—

(a) the maximum rent payable in respect of premises subject to a residential tenancy agreement is fixed by a notice under Part VII of the *Housing Improvement Act, 1940-1978*;

and

- (b) that notice is revoked pursuant to the provisions of that Act,

the rent payable by the tenant in respect of the premises may be increased by the landlord by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, if—

- (c) the notice is given not more than sixty days after the day on which the notice referred to in paragraph (a) was so revoked;

and

- (d) the day specified in the notice is not less than fourteen days after the day on which the notice is given.

(2b) Notwithstanding the provisions of this section (but subject to subsection (2c)), where—

- (a) the landlord under a residential tenancy agreement is a registered housing co-operative;

and

- (b) under the terms of the agreement the rent payable in respect of the premises is variable according to variations in the tenant's income,

the rent payable by the tenant may be increased by the landlord on the ground of a variation in the tenant's income by notice in writing to the tenant specifying the amount of the increased rent and the day as from which the increased rent becomes payable, being a day not less than 14 days after the day on which the notice is given.

(2c) Where—

- (a) the terms of a residential tenancy agreement between a registered housing co-operative (as landlord) and a tenant allows the landlord to vary the method for calculating the rent payable under the agreement;

- (b) the landlord proposes such a variation;

and

- (c) the effect of the variation would be to increase the rent payable under the agreement,

the landlord must give the tenant a notice in writing specifying the proposed variation and the day from which the variation will apply, being a day—

- (d) not less than 60 days after the day on which the notice is given;

and

- (e) not less than six months after the day on which the tenancy commenced, or, if the method has already been varied since the commencement of the tenancy, the day on which it was last so varied,

(and, where such a notice is given, no further notice need be given under this section in respect of any variation of rent that occurs on the day from which the variation applies).

(3) A notice of increase of rent that has been given in accordance with this section and that has not been withdrawn by the landlord varies the residential tenancy agreement to the effect that the increased rent specified in the notice is payable under the agreement as from the day specified in the notice.

### **Increase in security bond**

**35.** (1) Where the amount of the rent payable under a residential tenancy agreement has been increased pursuant to section 34 of this Act, the amount of the security bond payable under the agreement may be increased by the landlord by notice in writing to the tenant specifying the amount of the increase and the day on which it is payable, being a day—

- (a) not less than sixty days after the day on which the notice is given;

and

- (b) not less than twenty-four months after the day on which the tenancy commenced, or, if the amount of the security bond has been increased under this section, the day on which it was last so increased,

but otherwise the amount of the security bond shall not increase or be increased.

(2) The amount of a security bond may not be increased under this section to an amount that would exceed four weeks' rent under the residential tenancy agreement at the time at which the amount of the increase would be payable.

(3) A notice of increase of the amount of a security bond that has been given in accordance with this section and that has not been withdrawn by the landlord varies the residential tenancy agreement to the effect that the amount of the increase specified in the notice is payable under the agreement on the day specified in the notice.

(4) The provisions of subsection (2) of section 32 of this Act apply to an amount paid pursuant to this section.

### **Excessive rent**

**36.** (1) A tenant under a residential tenancy agreement may apply to the Tribunal for an order declaring that the rent payable in respect of the premises is excessive.

(2) The Tribunal shall, in determining whether or not the rent payable in respect of the premises is excessive, have regard to—

- (a) the general level of rents for comparable premises in the locality or a similar locality;
- (b) the estimated capital value of the premises at the date of the application;

- (c) the amount of the outgoings in respect of the premises required to be borne by the landlord under the agreement;
- (d) the estimated cost of any services provided by the landlord or tenant under the agreement;
- (e) the value and nature of the fittings, appliances and other goods provided with the premises for use by the tenant;
- (f) the accommodation and amenities provided in the premises and the state of repair and general condition thereof;

and

- (g) any other relevant matter.

(3) Where the Tribunal determines under this section that the rent payable in respect of the premises is excessive, the Tribunal may, having regard to the justice and merits of the case, order that from a day specified by the Tribunal, not being earlier than the date of the application by the tenant, the rent payable in respect of the premises under any residential tenancy agreement shall not exceed an amount specified by the Tribunal.

(4) An order made by the Tribunal under this section shall have effect until the expiration of such period not exceeding one year as is fixed by the Tribunal commencing on the day on which the order is made.

(5) The Tribunal may, upon application by the landlord of any premises in respect of which it has made an order under this section, if satisfied, having regard to the matters set out in subsection (2) of this section, that it is just so to do, vary or revoke the order.

(6) A person shall not demand or receive any rent in respect of premises of an amount that exceeds the amount fixed by the Tribunal by an order under this section in respect of the premises.

Penalty: Five hundred dollars.

#### **Duty to give receipt for rent**

**37.** (1) Any person who receives any rent under a residential tenancy agreement shall, within forty-eight hours of receiving the rent, prepare and give, or cause to be given, to the person paying the rent a receipt specifying the date on which the rent was received, the name of the person paying the rent, the amount paid, the period of the tenancy in respect of which it is paid, and the premises in respect of which it is paid.

Penalty: Two hundred dollars.

(1a) Subsection (1) does not apply in relation to rent paid pursuant to an agreement between the landlord and tenant into an account at a bank, building society or other similar body nominated by the landlord.

(2) Notwithstanding the provisions of subsection (1) of this section, a licensed agent within the meaning of the *Land and Business Agents Act, 1973-1975*, is required to prepare but is not required to give a receipt in accordance with that subsection, unless requested to do so by the person paying the rent.

**Proper records of rent to be kept**

**38.** (1) A landlord under a residential tenancy agreement shall keep, or cause to be kept, a record showing the rent received in respect of the premises.

Penalty: Two hundred dollars.

(2) No person shall make in any record referred to in subsection (1) of this section any entry that is to his knowledge false in a material particular.

Penalty: Five hundred dollars.

**Payment of rent by post-dated cheques, etc., prohibited**

**39.** No person shall require a post-dated cheque or other negotiable instrument that is post-dated in payment of rent under a residential tenancy agreement.

Penalty: Two hundred dollars.

**Apportionment of rent**

**40.** The rent payable under a residential tenancy agreement shall accrue from day to day and upon termination be apportioned accordingly and the appropriate amount shall be payable or recoverable forthwith.

**Distress for rent prohibited**

**41.** No person shall levy or make distress for rent payable under a residential tenancy agreement.

Penalty: Five hundred dollars.

DIVISION II—GENERAL

**Tenant's responsibility for cleanliness and damage**

**42.** (1) It shall be a term of every residential tenancy agreement that the tenant—

(a) shall keep the premises in a reasonable state of cleanliness;

(b) shall notify the landlord of any damage to the premises;

and

(c) shall not intentionally or negligently cause or permit damage to the premises.

(2) In this section "premises" includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

**Tenant's conduct on premises**

**43.** It shall be a term of every residential tenancy agreement—

- (a) that the tenant shall not use the premises, or cause or permit the premises to be used, for any illegal purpose;
- (b) that the tenant shall not cause or permit a nuisance; and
- (c) that, where the premises are adjacent to other premises occupied by any other tenant of the landlord, or by the landlord, the tenant shall not cause or permit any interference with the reasonable peace, comfort or privacy of that other tenant or the landlord in the use by the other tenant or the landlord of the other premises.

**Vacant possession**

**44.** (1) It shall be a term of every residential tenancy agreement that the tenant shall have vacant possession of the premises on the day on which the tenant is entitled to enter into occupation of the premises under the agreement.

(2) In subsection (1) of this section "premises" does not include any part of the premises in respect of which the tenant does not have a right of exclusive occupation.

**Legal impediments to occupation as residence**

**45.** It shall be a term of every residential tenancy agreement on the part of the landlord that there is not any legal impediment of which, at the time of entering into the agreement, he had or ought reasonably to have had knowledge to occupation of the premises as a residence for the period of the tenancy.

**Landlord's responsibility for cleanliness and repairs**

**46.** (1) It shall be a term of every residential tenancy agreement that the landlord—

- (a) shall provide the premises in a reasonable state of cleanliness;
- (b) shall provide and maintain the premises in a reasonable state of repair having regard to their age, character and prospective life;
- (c) shall compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where the state of disrepair has arisen otherwise than as a result of a breach of the agreement by the tenant and is likely to cause injury to person or property or undue inconvenience to the tenant and the tenant has made a reasonable attempt to give the landlord notice of the state of disrepair;

and

- (d) shall comply with all requirements in respect of buildings, health and safety under any other Act in so far as they apply to the premises.

(1a) A landlord is not obliged to compensate the tenant under the term prescribed by paragraph (c) of subsection (1) of this section unless the repairs are carried out by a person who holds a licence that he is required to hold under any Act to perform such work and the tenant has furnished to the landlord a report prepared by that person as to the apparent cause of the state of disrepair.

(2) The terms prescribed by subsection (1) of this section apply notwithstanding that the tenant has notice of the state of the premises at the time at which the agreement is entered into.

(2a) The term prescribed by subsection (1)(b) does not apply in relation to items of a prescribed kind where the landlord is a registered housing co-operative.

(3) The terms prescribed by paragraphs (b) and (c) of subsection (1) of this section do not apply to premises while a notice is in force under Part VII of the *Housing Improvement Act, 1940-1977*, fixing the maximum rent in respect of the premises.

(4) In this section "premises" includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

### **Quiet enjoyment**

**47.** (1) It shall be a term of every residential tenancy agreement—

(a) that the tenant shall have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title to that of the landlord;

(b) that the landlord shall not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises;

and

(c) that the landlord shall take all reasonable steps to enforce the obligation of any other tenant of the landlord in occupation of adjacent premises not to cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use by the tenant of the premises.

(2) A landlord who breaches the term prescribed by paragraph (b) of subsection (1) of this section in circumstances that amount to harassment of the tenant shall, in addition to any civil liability that he might incur by so doing, be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) In this section "premises" includes everything provided with the premises (whether under the residential tenancy agreement or not) for use by the tenant.

### **Locks**

**48.** (1) It shall be a term of every residential tenancy agreement—

(a) that the landlord shall provide and maintain such locks or other devices as are necessary to ensure that the premises are reasonably secure;

and

(b) that neither the landlord nor the tenant shall alter, remove or add any lock or device without the consent of the other given at, or immediately before, the time that the alteration, removal or addition is carried out.

(2) A landlord or tenant who, without reasonable excuse, breaches the term prescribed by paragraph (b) of subsection (1) of this section shall, in addition to any civil liability that he might incur by so doing, be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(3) Where an agent of a landlord, without reasonable excuse, alters, removes or adds a lock or device without the consent of the tenant given at, or immediately before, the time that the alteration, removal or addition is carried out, the agent shall, in addition to any civil liability that he might incur by so doing, be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(4) The liability of an agent under subsection (3) shall be in addition to any liability of the landlord in respect of the actions of the agent.

**Landlord's right of entry**

**49.** (1) It shall be a term of every residential tenancy agreement that the landlord may enter the premises—

- (a) in any case of emergency;
- (b) for the purpose of inspecting the premises or any other purpose, on a day and at a reasonable hour, specified in a notice given to the tenant not less than seven nor more than fourteen days in advance;
- (c) at any reasonable hour for the purpose of collecting the rent under the agreement, where it is payable not more frequently than once every week and it is agreed that the rent be collected at the premises, and at the same time, but not more frequently than once every four weeks, for the purpose of inspecting the premises;
- (d) for the purpose of carrying out necessary repairs to or maintenance of the premises, at any reasonable hour, after giving the tenant not less than forty-eight hours notice;
- (e) for the purpose of showing the premises to prospective tenants, at any reasonable hour and on a reasonable number of occasions during the period of twenty-eight days preceding the termination of the agreement, after giving the tenant reasonable notice;
- (f) for the purpose of showing the premises to prospective purchasers, at any reasonable hour and on a reasonable number of occasions, after giving the tenant reasonable notice;

or

- (g) with the consent of the tenant given at, or immediately before, the time of entry,

but not otherwise.

(2) In subsection (1) of this section "premises" does not include any part of the premises used by the tenant in common with the landlord or any other tenant of the landlord.

**Right of tenant to affix and remove fixtures, etc.**

**50.** It shall be a term of every residential tenancy agreement—

- (aa) that the tenant shall not, without the landlord’s written consent, affix any fixture or make any renovation, alteration or addition to the premises, unless the agreement so provides;
- (aab) that the landlord shall not unreasonably withhold his consent;
- (a) that the tenant may remove any fixture that he has affixed to the premises during the period that he has continued in possession of the premises under any residential tenancy agreement, unless the removal of the fixture would cause irreparable damage to the premises;

and

- (b) that, where the tenant causes any damage to the premises by removing any fixture, he shall notify the landlord and, at the option of the landlord, repair the damage or compensate the landlord for any reasonable expenses incurred by the landlord in repairing the damage.

**Landlord to bear outgoings in respect of premises**

**51.** It shall be a term of every residential tenancy agreement that the landlord shall bear all rates, taxes or charges imposed in respect of the premises under any of the following Acts:—

- (a) the *Local Government Act, 1934-1977*;
- (b) the *Land Tax Act, 1936-1976*;
- (c) the *Waterworks Act, 1932-1975*;
- (d) the *Sewerage Act, 1929-1975*;
- (e) the *Irrigation Act, 1930-1975*,

other than a charge for excess water.

**Right of tenant to assign or sub-let**

**52.** (1) A residential tenancy agreement may provide that the right of a tenant to assign his interest under the agreement or sub-let the premises is subject to the consent of the landlord, and, where it is so provided, it shall be a term of the agreement—

- (a) that the landlord shall not unreasonably withhold his consent;

and

- (b) that the landlord shall not make any charge for giving his consent other than his reasonable expenses incidental thereto.

(3) Any term of a residential tenancy agreement that removes or otherwise than in the manner referred to in this section limits the right of a tenant to assign or sub-let is void and of no effect.

(4) Where the landlord under a residential tenancy agreement is a registered housing co-operative—

(a) subsections (1) and (3) do not apply;

and

(b) it will be a term of the agreement—

(i) that the right of the tenant to assign his or her interest under the agreement or sub-let the premises is subject to the consent of the landlord;

(ii) that the landlord may, in its absolute discretion, withhold its consent to any assignment of the tenant's interest under the agreement;

(iii) that the tenant is only entitled to sub-let the premises on a reasonable number of occasions for reasonable periods;

and

(iv) provided subparagraph (iii) is observed, that the landlord will not unreasonably withhold its consent to any sub-letting of the premises by the tenant.

#### **Vicarious responsibility of tenant for breach by other person lawfully on premises**

**53.** It shall be a term of every residential tenancy agreement that, where a person other than the tenant is lawfully on the premises, the tenant is vicariously responsible for any act or omission by that person that would, if it had been an act or omission by the tenant, have constituted a breach of the agreement.

#### **Tenant to be notified of landlord's name and address**

**54.** (1) A landlord under a residential tenancy agreement shall, at the time of entering into the agreement, notify the tenant, or cause the tenant to be notified, in writing of—

(a) the full name and address of the landlord and any person having superior title to that of the landlord;

and

(b) where the landlord or such person is a company, the full name and business address of the secretary of the company.

Penalty: Fifty dollars.

(2) Where a person succeeds another person as the landlord under a residential tenancy agreement, the new landlord shall within fourteen days notify the tenant, or cause the tenant to be notified, in writing of—

(a) the full name and address of the new landlord;

and

(b) where the new landlord is a company, the full name and business address of the secretary of the company.

Penalty: Fifty dollars.

(3) Where any name or address of which the landlord is required to notify the tenant under this section is changed, the landlord shall within fourteen days notify the tenant, or cause the tenant to be notified, in writing of the changed name or address.

Penalty: Fifty dollars.

**Tenant not to give landlord false name or occupation**

**55.** A tenant under a residential tenancy agreement shall not falsely state to his landlord his name or place of occupation.

Penalty: Fifty dollars.

**Landlord or agent to deliver copy of written residential tenancy agreement to tenant**

**56.** (1) A landlord or agent of a landlord who has required or invited a tenant to sign a written residential tenancy agreement or memorandum thereof shall—

(a) provide the tenant with a copy of the document at the time at which it is signed by the tenant;

and

(b) ensure that a fully executed copy of the document is delivered to the tenant within twenty-one days after it has been signed and delivered by the tenant, or, where that is not reasonably practicable in the circumstances, within such longer period as is so practicable.

Penalty: Two hundred dollars.

(2) If a landlord or agent of a landlord fails to execute and deliver a copy of the document in accordance with paragraph (b) of subsection (1) of this section, acceptance of rent by the landlord or agent of a landlord without reservation shall give to the document the same effect as if it had been fully executed.

**Cost of written agreement to be borne by landlord**

**57.** Where a landlord requires the execution of a written residential tenancy agreement or memorandum of a residential tenancy agreement the cost of its preparation shall be borne by the landlord.

**Discrimination against tenants with children**

58. (1) A person shall not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that it is intended that a child should live in the premises.

Penalty: Two hundred dollars.

(2) A person shall not—

(a) instruct any person not to grant;

or

(b) state his intention, whether by advertisement or otherwise, not to grant,

a tenancy to any person, if it is intended that a child should live in the premises.

Penalty: Two hundred dollars.

\* \* \* \* \*

(5) This section does not apply where the premises the subject of the tenancy are the principal place of residence of the landlord or where the landlord or his agent appointed to manage the premises resides in premises adjoining the premises the subject of the tenancy.

**Accelerated rent and liquidated damages prohibited**

59. (1) Where a residential tenancy agreement provides that, upon breach by the tenant of the agreement to pay rent or any other term of the residential tenancy agreement or breach of this Act or any other Act, the tenant is liable to pay—

(a) all or any part of the rent remaining payable under the agreement;

(b) rent of an increased amount;

(c) any amount by way of a penalty;

or

(d) any amount by way of liquidated damages,

the provision is to that extent void and of no effect and the landlord shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(2) Where a residential tenancy agreement provides that, if the tenant does not breach the agreement to pay rent or any other term of the residential tenancy agreement or any provision of this Act or any other Act, the rent shall or may be decreased or the tenant shall or may be granted or paid a rebate, refund or other benefit, the residential tenancy agreement shall be deemed to have been varied from the commencement of the tenancy so that the tenant is entitled to the reduction, rebate, refund or other benefit in any event and the landlord shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

**Duty of mitigation**

**60.** The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply to and in relation to a breach of a residential tenancy agreement.

## PART V

## TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS

**Termination of residential tenancy agreements**

**61.** (1) Notwithstanding any Act or law to the contrary, a residential tenancy agreement shall not terminate or be terminated except—

- (a) where the landlord or tenant gives notice of termination under this Act and—
    - (i) the tenant delivers up vacant possession of the premises on or after the expiration of the period of notice required under this Act;or
    - (ii) the Tribunal, upon application by the landlord, terminates the agreement under section 73 of this Act;
  - (ab) in relation to a tenancy for a fixed term, where the term expires and—
    - (i) the tenant delivers up vacant possession of the premises on or after the expiration of the term;or
    - (ii) the Tribunal, upon application by the landlord, terminates the agreement under section 73a;
  - (b) where the Tribunal terminates the agreement under section 74, 75 or 76 of this Act;
  - (c) where a person having superior title to that of the landlord becomes entitled to possession of the premises;
  - (c1) where a person succeeding to the title of the landlord becomes entitled to possession of the premises;
  - (c2) where a mortgagee in respect of the premises takes possession of the premises in pursuance of the mortgage;
  - (d) where the tenant abandons the premises;
  - (e) where the tenant delivers up vacant possession of the premises with the consent of the landlord which once given is irrevocable;
  - (f) by merger;
- or
- (g) by disclaimer.

(2) Where a residential tenancy agreement continues beyond the day on which it would upon its terms have terminated by effluxion of time or the happening of an event, subject to subsection (3) of this section, the same terms as last applied before that day continue to apply.

(3) The Tribunal may, upon application by the landlord or tenant, make such modification of the terms of a residential tenancy agreement referred to in subsection (2) of this section as may be necessary for or appropriate to its continuance.

**Form of notice of termination by landlord**

**62.** Notice of termination of a residential tenancy agreement by the landlord must—

- (a) be in writing and in the prescribed form;
  - (b) be signed by the landlord or his agent;
  - (c) identify the premises the subject of the agreement;
  - (d) specify the day on which possession of the premises is to be delivered up by the tenant;
- and
- (e) specify and give particulars of the ground, if any, upon which the notice is given.

**Notice of termination by landlord upon ground of breach of term of agreement**

**63.** (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant upon the ground that the tenant has breached a term of the agreement.

(2) Where a landlord gives notice of termination under this section, the period of notice must be not less than fourteen days.

(3) Where notice of termination is given under this section upon the ground of a breach of the agreement to pay rent—

- (a) the notice is ineffectual unless the rent or any part of the rent has remained unpaid in breach of the agreement for not less than fourteen days before the notice was given;
- and
- (b) the notice is not rendered ineffectual by failure by the landlord to make a prior formal demand for payment of the rent.

(4) Where notice of termination is given under this section in respect of a residential tenancy agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to deliver up possession of the premises is earlier than the last day of that term.

(5) Failure by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term to deliver up vacant possession of the premises at the expiration of the term does not constitute a breach of the agreement.

**Notice of termination by landlord upon ground that possession required for certain purposes**

**64.** (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant upon the ground—

- (a) that he requires possession of the premises for their demolition;
- (b) that he requires possession of the premises for the purpose of carrying out repairs or renovations that cannot be carried out with reasonable convenience while the tenant remains in possession of the premises;
- (c) that he requires possession of the premises for his own occupation or occupation by his spouse, his child, his parent or the spouse or his child or his parent;
- (ca) that he has entered into a contract for sale of the premises under which he is required to give vacant possession of the premises;

or

- (d) that he requires possession of the premises for any prescribed purpose.

(2) Where a landlord gives notice of termination under this section, the period of notice must be not less than 60 days.

\* \* \* \* \*

(4) A landlord or agent of a landlord who gives notice of termination under this section, and falsely states the ground for the notice shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(5) A landlord who recovers possession of premises upon notice of termination under this section and who, without the consent of the Tribunal, grants a tenancy in respect of the premises within six months after so recovering possession of the premises shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(6) The Tribunal may, upon the application of a person seeking the consent referred to in subsection (5) of this section, give its consent in such circumstances as it thinks fit.

(7) This section does not apply in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term.

**Notice of termination by a housing co-operative**

**64a.** (1) Where the landlord under a residential tenancy agreement is a registered housing co-operative, the landlord may give notice of termination of the agreement on the ground—

- (a) that the tenant has ceased to be a member of the co-operative;

or

- (b) that the tenant has ceased to satisfy a condition specified by the agreement as being essential to the continuation of the tenancy.

(2) Where a landlord gives notice of termination under this section, the period of notice must be not less than 28 days.

**Notice of termination by landlord without any ground**

**65.** (1) A landlord may give notice of termination of a residential tenancy agreement to the tenant without specifying any ground for the notice.

(2) Where a landlord gives notice of termination under this section, the period of notice must be not less than one hundred and twenty days.

(3) This section does not apply in relation to—

(a) a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term;

or

(b) a residential tenancy agreement between a registered housing co-operative and a member of the co-operative.

**Termination by landlord and proceedings for order or order fixing rent under this Act**

**66.** (1) Where proceedings are pending for an order, or an order is in force, under section 36 of this Act fixing the maximum rent in respect of premises the subject of a residential tenancy agreement—

(a) any notice of termination of the agreement given by the landlord under section 65 of this Act is ineffectual;

and

(b) any other notice of termination of the agreement given by the landlord is ineffectual unless first authorized by the Tribunal under subsection (2) of this section.

(2) The Tribunal may, upon application by a landlord, authorize the landlord to give notice of termination, if it is satisfied that neither the institution of the proceedings for the order nor the making of the order has wholly or partly motivated the landlord to give notice of termination.

**Termination by landlord and proceedings for order or order fixing rent under Housing Improvement Act**

**67.** (1) Where a Housing Improvement Act notice is in force in respect of any premises the subject of a residential tenancy agreement—

(a) any notice of termination of the agreement given by the landlord under section 65 of this Act is ineffectual;

and

(b) any other notice of termination of the agreement given by the landlord is ineffectual unless first authorized by the Tribunal under subsection (2) of this section.

(2) The Tribunal may, upon application by a landlord, authorize the landlord to give notice of termination, if it is satisfied—

(a) that, in the case of notice of termination upon the ground referred to in paragraph (a) or (b) of subsection (1) of section 64 of this Act, the landlord has established that ground;

or

(b) that, in the case of any other notice of termination, the giving of the Housing Improvement Act notice has not wholly or partly motivated the landlord to give notice of termination.

(3) In this section "Housing Improvement Act notice" means a notice given under Part VII of the *Housing Improvement Act, 1940-1977*, being a notice of intention to declare premises substandard, a notice declaring premises substandard or a notice fixing the maximum rent in respect of premises.

**Notice by landlord not waived by acceptance of rent**

**68.** A demand for, any proceeding for the recovery of, or acceptance of, rent by a landlord after he has notice of a breach of the agreement by the tenant or has given the tenant notice of termination under this Act does not operate as a waiver of that breach or that notice.

**Form of notice of termination by tenant**

**69.** Notice of termination of a residential tenancy agreement by the tenant must—

(a) be in writing;

(b) be signed by the tenant and identify the premises the subject of the agreement;

and

(c) specify the day on which the tenant will deliver up possession of the premises.

**Notice of termination by tenant**

**70.** (1) A tenant may give notice of termination of a residential tenancy agreement to the landlord without specifying any ground for the notice.

(2) Where a tenant gives notice of termination under this section, the period of notice must be not less than twenty-one days.

(3) This section does not apply in relation to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of that term.

**Notice of termination by landlord or tenant where agreement frustrated**

**71.** (1) Where, otherwise than as a result of a breach of a residential tenancy agreement, the premises, or a part of the premises, the subject of that agreement are destroyed or rendered uninhabitable or cease to be lawfully useable as a residence or are appropriated or acquired by any authority by compulsory process—

(a) the rent shall abate accordingly;

and

- (b) the landlord or tenant may give notice of termination of the agreement to the other upon that ground.

(2) Where a landlord gives notice of termination under this section, the period of notice must be not less than seven days.

(3) Where a tenant gives notice of termination under this section, the period of notice must be not less than two days.

(4) Where notice of termination is given under this section in respect of a residential tenancy agreement that creates a tenancy for a fixed term, the notice is not ineffectual by reason of the fact that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is earlier than the last day of that term.

**Effect of notice of termination of periodic tenancy**

**72.** Notice of termination of a residential tenancy agreement that creates a periodic tenancy is not ineffectual by reason of the fact—

- (a) that the period of the notice, being not less than the period required under this Act, is less than that which would otherwise have been required at law;

or

- (b) that the day specified as the day on which the tenant is to, or will, deliver up possession of the premises is not the last day of a period of the tenancy.

**Duty of landlords to notify registrar of short fixed term tenancies**

**72a.** The landlord under a residential tenancy agreement that creates a tenancy for a fixed term of less than one hundred and twenty days shall, within fourteen days after entering into the agreement, notify the registrar of the Tribunal, or cause the registrar to be notified, in writing of—

- (a) the names and addresses of the parties to the agreement;
- (b) the address of the premises subject to the agreement;

and

- (c) the first and last days of the term of the tenancy.

Penalty: Two hundred dollars.

**Application to Tribunal by landlord for termination and order for possession**

**73.** (1) Where a landlord or a tenant under a residential tenancy agreement gives notice of termination to the other under this Act and the tenant fails to deliver up possession of the premises on the day specified, the landlord may, within thirty days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

(2) Subject to this section, the Tribunal shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises, if it is satisfied—

- (a) that notice of termination was given by the landlord or tenant to the other and, in the case of notice by the landlord, that it complied with and was given in accordance with this Act;

and

- (b) where the notice was given by the landlord upon a particular ground prescribed by this Act, that the landlord has established that ground and, in the case of notice upon the ground of a breach by the tenant of a term of the agreement, that the breach is in the circumstances of the case such as to justify termination of the agreement.

(3) Notwithstanding the provisions of subsection (2) of this section, the Tribunal may—

- (a) except where the premises the subject of the agreement are the principal place of residence of the landlord, suspend the operation of orders made under that subsection for a period not exceeding ninety days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused—

- (i) to the landlord by suspending the orders;

or

- (ii) to the tenant by not suspending the orders;

or

- (b) refuse to make the orders under that subsection, if it is satisfied—

- (i) that the landlord was wholly or partly motivated to give the notice by the fact that the tenant had complained to a governmental authority or taken steps to secure or enforce his rights as a tenant;

- (ii) in the case of notice given by the landlord upon the ground of a breach by the tenant, that the tenant has remedied the breach;

or

- (iii) in the case of notice given by the landlord upon the ground referred to in section 71 of this Act, that the consequences of the landlord continuing to be bound by the agreement would not be unduly burdensome to the landlord.

(4) Where in any proceedings upon an application under this section the Tribunal is satisfied that the tenant had, within the period of six months before notice was given by the landlord, complained to a governmental authority or taken steps to secure or enforce his rights as a tenant, the burden shall lie on the landlord to prove that he was not wholly or partly motivated to give notice by that fact.

(5) Subject to paragraph (a) of subsection (3) of this section, where the Tribunal terminates an agreement and makes an order for possession of the premises under this section, the Tribunal shall specify the day as from which the orders shall operate, being not more than seven days after the day on which the orders are made.

(6) The *Limitation of Actions Act, 1936-1975*, does not apply to or in relation to an application under this section.

**Application to Tribunal for termination and order for possession in relation to fixed term agreements**

**73a.** (1) Where a residential tenancy agreement creates a tenancy for a fixed term and the tenant fails to deliver up possession of the premises on or after the expiration of the term, the landlord may, within thirty days after the expiration of the term, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

(2) Subject to this section, the Tribunal shall, upon application under this section, make an order terminating the agreement and an order for possession of the premises.

(3) Notwithstanding the provisions of subsection (2), except where the premises the subject of the agreement are the principal place of residence of the landlord, the Tribunal—

(a) may suspend the operation of orders under that subsection for a period not exceeding ninety days, if it is satisfied that it is desirable to do so having regard to the relative hardship that would be caused—

(i) to the landlord by suspending the orders;

or

(ii) to the tenant by not suspending the orders;

and

(b) shall refuse to make the orders under that subsection where the term of the tenancy under the agreement is less than one hundred and twenty days unless it is satisfied—

(i) that the landlord genuinely proposed, at the time that he entered into the agreement, to use the premises after the expiration of the term for purposes inconsistent with the tenant continuing to occupy the premises;

or

(ii) that the tenant of his own initiative sought a tenancy of a term of less than one hundred and twenty days.

(4) Subject to subsection (3)(a), where the Tribunal terminates an agreement and makes an order for possession of the premises under this section, the Tribunal shall specify the day as from which the orders shall operate, being not more than seven days after the day on which the orders are made.

(5) The *Limitation of Actions Act, 1936-1975*, does not apply to or in relation to an application under this section.

**Tribunal may terminate agreement where tenant causing serious damage or injury**

**74.** (1) The Tribunal may, upon application by the landlord under a residential tenancy agreement, terminate the agreement, if it is satisfied that the tenant has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to the landlord or his agent or any person in occupation of or permitted on adjacent premises.

(2) Where the Tribunal terminates a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the premises of immediate effect.

**Tribunal may terminate agreement where landlord would otherwise suffer undue hardship**

**75.** (1) The Tribunal may, upon application by the landlord under a residential tenancy agreement, terminate the agreement, if it is satisfied that the landlord would, in the circumstances of the case, suffer undue hardship if he were required to terminate the agreement under any other provision of this Act.

(2) Where the Tribunal terminates a residential tenancy agreement under this section, the Tribunal—

(a) shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate that the Tribunal considers is, in the circumstances of the case, appropriate;

and

(b) may make such other orders as to compensation of the tenant for any loss caused thereby or as to any other matter that the Tribunal considers is, in the circumstances of the case, appropriate.

**Tribunal may terminate agreement for breach by landlord**

**76.** (1) The Tribunal may, upon application by the tenant under a residential tenancy agreement, terminate the agreement, if it is satisfied the landlord has breached the agreement and the breach is in the circumstances of the case such as to justify termination of the agreement.

(2) Where the Tribunal terminates a residential tenancy agreement under this section, the Tribunal shall also make an order for possession of the premises and shall specify a day as from which the orders shall operate.

**Compensation to landlord for holding over**

**77.** (1) Where a tenant fails to comply with an order for possession made by the Tribunal, the landlord shall be entitled to compensation for any loss caused by that failure.

(2) The Tribunal may, upon application by the landlord, order the tenant to pay to the landlord any compensation to which the landlord is entitled under this section.

**Order by Tribunal that premises are abandoned**

**78.** (1) Where a landlord under a residential tenancy agreement believes that the tenant has abandoned the premises, the landlord may apply to the Tribunal for an order declaring that the tenant has abandoned the premises.

(2) The Tribunal may, upon application by a landlord under this section, declare that the premises were abandoned by the tenant on a day specified by the Tribunal and the tenant shall be deemed to have abandoned the premises on that day.

**Right of landlord to compensation where tenant abandons premises**

**79.** (1) Where a tenant under a residential tenancy agreement abandons the premises, the landlord shall be entitled to compensation from the tenant for any loss (including loss of rent) caused thereby, but shall take all reasonable steps to mitigate such loss and shall not be entitled to compensation in respect of any loss that could have been avoided thereby.

(2) The Tribunal may, upon application by the landlord, order the tenant to pay to the landlord any compensation to which the landlord is entitled under this section.

**Abandoned goods**

**79a.** (1) Where a residential tenancy agreement is terminated and goods are left on the premises that were subject to the agreement, the former landlord may, after the expiration of two days from the termination of the agreement, remove and destroy or dispose of the goods if—

(a) the goods are perishable foodstuffs;

or

(b) the value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.

(2) Where a residential tenancy agreement is terminated and goods are left on the premises that were subject to the agreement and have not been removed for destruction or disposal under subsection (1), the former landlord shall store them in a safe place and manner for a period of not less than sixty days.

(3) A former landlord shall before the expiration of seven days after he has stored goods under subsection (2)—

(a) where the former tenant has informed him of his forwarding address—send a notice to the tenant at that address in or to the effect of the form prescribed for the purposes of this paragraph;

and

(b) cause a notice in or to the effect of the form prescribed for the purposes of this paragraph to be inserted in a newspaper circulating generally throughout the State.

(4) At the request of a former landlord, the Commissioner may state in writing whether or not in his opinion there are reasonable grounds for believing that subsection (1) applies in respect of particular goods.

(5) Where a former landlord has been found liable to the owner of goods in respect of the removal, destruction or disposal of the goods, being goods that were left on premises that were subject to a former residential tenancy agreement, and it is proved that he removed and destroyed or disposed of the goods in reliance upon a statement of the Commissioner under subsection (4), the former landlord shall be entitled to be paid from the Fund an amount equal to the amount in respect of which he has been found liable.

(6) Where—

- (a) a residential tenancy agreement has been terminated;
- (b) goods have been left on the premises that were subject to the agreement;
- (c) at the request of the former landlord, the Commissioner has made a statement in writing that in his opinion there are reasonable grounds for believing that subsection (1) does not apply to the goods;

and

- (d) the total cost of removing, storing and selling the goods does in fact exceed the value of the goods,

the Tribunal may on application by the former landlord make an order for the payment to him out of the Fund of an amount equal to the difference between the value of the goods and the reasonable cost of removal, storage and sale.

(7) A person who has a lawful right to goods removed and stored under subsection (2) may at any time before the goods are sold under subsection (8) reclaim the goods upon paying to the former landlord the reasonable costs of the removal and storage of the goods.

(8) Where goods are stored under subsection (2) and have not been reclaimed within sixty days after the day on which they were removed and stored, the landlord shall as soon as practicable after the expiration of that period cause them to be sold by public auction.

(9) If goods are stored, removed and sold by public auction under this section, the landlord is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.

(10) Where goods have been sold under this section by a former landlord, the former landlord may, upon application containing the prescribed information, pay to the Tribunal an amount that the Tribunal is satisfied represents the balance of the proceeds of the sale after deduction of any amount to which the former landlord is entitled under subsection (9) and any amount which he is owed under the former residential tenancy agreement, and, where such payment is made, the receipt of the Tribunal for the moneys paid shall be a sufficient discharge to the former landlord of his liability in respect of the moneys.

(11) Any moneys paid to the Tribunal under subsection (10) shall be paid into the Fund.

(12) Where any application is made to the Tribunal by any person claiming any amount paid into the Fund under this section, the Tribunal may, upon being satisfied that the person is entitled to the amount, order that the amount be paid to him.

(13) Where goods are sold by public auction under this section, the purchaser shall, unless he has actual notice of any interest in the goods of any person other than the former tenant, acquire a good title to the goods in defeasance of any such interest.

(14) A former landlord shall not incur any liability—

(a) in respect of the removal, destruction or disposal of goods under subsection (1);

or

(b) in respect of the removal, storage or sale under this section of goods to which subsection (1) does not apply, except liability for intentional or negligent damage to the goods or where he has actual notice of any interest in the goods of any person other than the former tenant and fails to take all reasonable steps to notify that person of the whereabouts of the goods and afford that person a reasonable opportunity to reclaim the goods.

(15) Where a dispute arises between a former landlord and a former tenant in respect of goods to which this section applies, the Tribunal may, upon application by such person, order the payment of any amount or make such other order as the Tribunal considers appropriate in the circumstances.

#### **Recovery of premises by peaceable entry prohibited**

**80.** No person shall, except in pursuance of an order of a court or the Tribunal, enter premises or any part of premises of which a person has possession as a tenant under a residential tenancy agreement or a former tenant holding over after termination of such agreement for the purpose of recovering possession of the premises or part of the premises, whether entry is effected peaceably or otherwise.

Penalty: One thousand dollars.

#### **Protection of tenants in relation to persons having superior title**

**81.** (1) Where a person is proceeding by action before a court or the Tribunal to recover possession of premises, the court or the Tribunal shall not make the order sought by that person unless it is satisfied—

(a) as to whether or not any person has possession of the premises, or any part of the premises, as a tenant under a residential tenancy agreement or a former tenant holding over after termination of such agreement, not being the immediate tenant or former tenant of that person;

and

(b) that any such tenant or former tenant has had reasonable notice of the proceedings.

(2) Where a person, by action before a court or the Tribunal or otherwise, is proceeding for, or has recovered, possession of premises, and, at the time of the proceedings or recovery, a person has or had possession of the premises, or any part of the premises, as a tenant under a residential tenancy agreement or a former tenant holding over after termination of such agreement, not being the immediate tenant or former tenant of that person—

(a) the court or Tribunal before which any such proceedings are brought;

or

(b) where such proceedings have been before a court or Tribunal and completed, or are not by way of action before a court or Tribunal, the Tribunal,

may, upon application by the tenant or former tenant, make an order vesting a tenancy in him to be held immediately of that person upon such terms and conditions as the court or Tribunal in the circumstances of the case thinks fit.

(3) An application by a tenant or former tenant under subsection (2) of this section must be made within a reasonable time after the tenant or former tenant has notice of the proceedings for, or the recovery of, possession of the premises.

#### **Bailiffs**

**82.** (1) The Governor may appoint such persons as he thinks fit to be bailiffs of the Tribunal.

(2) The office of bailiff of the Tribunal may be held in conjunction with any office in the public service of the State.

(3) A bailiff of the Tribunal shall be entitled to receive such remuneration and expenses as the Minister may determine.

#### **Enforcement of orders for possession**

**83.** (1) Where an order for possession of premises is made by the Tribunal and the person in whose favour the order was made advises the Tribunal that the order has not been complied with, a bailiff of the Tribunal shall enforce the order as soon as is practicable thereafter.

(2) A bailiff enforcing an order for possession of premises may enter the premises, ask such questions and take all such steps as are reasonably necessary for the purpose of enforcing the order.

(3) A member of the police force shall, if requested by a bailiff, assist the bailiff in enforcing an order for possession.

(4) In the exercise of the powers conferred by this section a bailiff may use such force as is reasonable and necessary in the circumstances.

(5) A person shall not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.

Penalty: Two hundred dollars.

(6) A person questioned pursuant to this section shall not refuse or fail to answer the question to the best of his knowledge, information and belief.

Penalty: Two hundred dollars.

(7) No liability shall attach to a bailiff or a member of the police force assisting a bailiff in respect of the exercise, or purported exercise, in good faith and with reasonable care of his powers under this section.

PART VI

RESIDENTIAL TENANCIES FUND

**Residential Tenancies Fund**

**84.** (1) The fund entitled the "Residential Tenancies Fund" shall be kept and administered by the Commissioner.

(2) Any security bond or rent paid into the Tribunal shall be paid into the Fund.

(3) Any security bond or rent paid into the Fund by the Tribunal shall be paid out of the Fund at the direction of the Tribunal.

**Investment of Fund**

**85.** Any of the moneys standing to the credit of the Fund that are not immediately required for the purposes of this Act may be invested in such manner as may be approved by the Minister.

**Application of income derived from investment of Fund**

**86.** Any income derived from the investment of the Fund under this Act may be applied—

- (aa) in making any payment required to be made from the Fund under section 79a;
- (a) in such circumstances and subject to such conditions as may be prescribed, towards compensating landlords under residential tenancy agreements in respect of damage caused to premises by children whom the landlords were required by this Act to permit to live on the premises;
- (b) in such circumstances and subject to such conditions as may be prescribed, towards compensating landlords under residential tenancy agreements in respect of damage caused to premises by tenants or persons (including children) permitted on premises by tenants;
- (c) towards the costs of administering this Act;
- (ca) on research, approved by the Minister on the recommendation of the Tribunal, into—
  - (i) the availability of rental accommodation within the community;
  - (ii) areas of social need related to the availability (or non-availability) of rental accommodation or particular kinds of rental accommodation;
- (cb) on a project—
  - (i) directed at providing accommodation, or assistance in relation to accommodation, for the homeless or other disadvantaged sections of the community;

and

- (ii) approved by the Minister on the recommendation of the Tribunal (being a recommendation made in 1987),

or, if such a project is not to be carried out in the form in which it was approved, on a project of a similar nature approved by the Minister on the recommendation of the Tribunal in substitution for that project;

or

- (d) for the benefit of landlords or tenants in such other manner as the Minister, on the recommendation of the Tribunal, may approve.

### **Accounts**

**87.** (1) The Commissioner shall cause proper accounts to be kept of the receipts and payments of the Fund.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Fund.

### **Annual report**

**88.** (1) The Commissioner shall, as soon as practicable after the thirtieth day of June in each year, submit to the Minister a report upon the administration of the Fund during the year ending on that day.

(2) The Minister shall cause the report of the Commissioner to be laid before each House of Parliament as soon as practicable after his receipt thereof.

PART VII

MISCELLANEOUS

**Contract to avoid Act**

**89.** (1) Any agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act is (except where such inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Act is void and of no effect.

(3) Any person who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Act, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

**Recovery of amounts paid under mistake of law or fact**

**90.** Where a party to a residential tenancy agreement pays any amount to the other party under a mistake of law or fact relating to the agreement, that party may—

(a) upon application to the Tribunal, recover that amount from the other party;

or

(b) in the case of payment by the tenant, deduct the amount from rent payable under the agreement.

**Tribunal may exempt tenancy agreement or premises from provision of Act**

**91.** The Tribunal may, upon application by any person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act shall not apply to or in relation to any residential tenancy agreement or prospective residential tenancy agreement or any premises or shall apply in a modified manner specified in the order and the order shall have effect accordingly.

**Harsh or unconscionable terms in residential tenancy agreements**

**92.** (1) The Tribunal may, upon application by a tenant under a residential tenancy agreement, make an order rescinding or varying any term of the agreement that it is satisfied is harsh or unconscionable or such that a court of equity would have granted relief and the order shall have effect accordingly.

(2) The Tribunal may, on making any order under subsection (1) of this section, make any further order as to the variation and execution of any document or otherwise as the Tribunal in the circumstances of the case thinks fit.

**Service**

**93.** (1) Any notice or document required or authorized to be given under this Act to any person may—

(a) be given to that person personally;

or

- (b) be sent by post addressed to that person at his last known place of residence, employment or business.

(2) Any notice or document required or authorized to be given under this Act to any person whose address is unknown shall be deemed to have been duly given to that person if a copy of it is published in a daily newspaper circulating throughout the State.

(3) Any notice or document required or authorized to be given under this Act to any tenant under a residential tenancy agreement shall be deemed to have been duly given to the tenant if it is given—

- (a) to any person apparently over the age of sixteen years apparently residing in the premises the subject of the agreement;

or

- (b) to the person who ordinarily pays the rent under the agreement.

(4) A notice or document required or authorized to be given under this Act to a landlord under a residential tenancy agreement shall be deemed to have been duly given to the landlord if it has been given to the agent of the landlord, to any person apparently over the age of sixteen years apparently residing at the place of residence of the landlord or to the person who ordinarily receives the rent under the agreement.

(5) Where two or more persons are landlords or tenants under a residential tenancy agreement it shall be sufficient compliance with a provision of this Act requiring or authorizing that a notice or document be given to the landlord or tenant under a residential tenancy agreement if the notice or document is given to any one of the landlords or tenants, as the case may be.

### **Summary procedure**

**94.** (1) Proceedings in respect of an offence against this Act shall be disposed of summarily.

(2) Proceedings in respect of an offence against this Act may be commenced at any time within two years of the day on which the offence is alleged to have been committed.

### **Regulations**

**95.** (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1) of this section, the regulations may—

- (a) prescribe the form of any document or notice for the purposes of this Act;
- (b) regulate the practice and procedure of the Tribunal;
- (c) provide for the payment and recovery of fees for applications to the Tribunal;
- (d) require the parties to a residential tenancy agreement to record on an inspection sheet, before the commencement, and after the termination, of the tenancy, their opinions of the state of the premises and prescribe the form of such inspection sheets and the manner in which the parties record their opinions;

(e) require the provision of information by the landlord to the tenant at the time of entering into the residential tenancy agreement;

(f) prescribe the form of written residential tenancy agreements and authorize or require the use of such form;

and

(g) prescribe penalties not exceeding two hundred dollars, for breach of, or non-compliance with, any regulation.

**APPENDIX**

## Legislative History

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 5:	definition of "registered housing co-operative" inserted by 65, 1991, s. 3 definition of "residential tenancy agreement" amended by 33, 1981, s. 3
Section 6:	substituted by 33, 1981, s. 4
Section 7(2a) and (2b):	inserted by 33, 1981, s. 5(a)
Section 7(3)(b):	repealed by 33, 1981, s. 5(b)
Section 7a:	inserted by 33, 1981, s. 6
Section 7a(1a):	inserted by 72, 1986, s. 2(a)
Section 7a(2):	amended by 72, 1986, s. 2(b)
Section 11(2):	amended by 33, 1981, s. 7
Section 14(2a) and (2b):	inserted by 33, 1981, s. 8
Section 16(1):	amended by 33, 1981, s. 9
Section 17:	amended by 33, 1981, s. 10
Section 19(1):	amended by 33, 1981, s. 11(a)
Section 19(2):	amended by 33, 1981, s. 11(b)
Section 19(3):	amended by 33, 1981, s. 11(c)
Section 20(1):	amended by 33, 1981, s. 12(a)
Section 20(4):	repealed by 33, 1981, s. 12(b)
Section 20(5):	amended by 33, 1981, s. 12(c)
Section 21(2):	amended by 69, 1991, s. 14
Section 22(1):	amended by 33, 1981, s. 13(a)
Section 22(4):	amended by 33, 1981, s. 13(b)
Section 22a:	inserted by 33, 1981, s. 14
Section 23(1):	amended by 33, 1981, s. 15
Section 24(6) - (8):	inserted by 65, 1991, s. 4
Section 30:	substituted by 33, 1981, s. 16
Section 31:	redesignated as s. 31(1) by 33, 1981, s. 17
Section 31(2):	inserted by 33, 1981, s. 17
Section 32(1):	amended by 33, 1981, s. 18(a)
Section 32(1a) and (1b):	inserted by 33, 1981, s. 18(b)
Section 33(3):	amended by 33, 1981, s. 19(a)
Section 33(3a) - (3c):	inserted by 33, 1981, s. 19(b)
Section 34(2a):	inserted by 33, 1981, s. 20
Section 34(2b) and (2c):	inserted by 65, 1991, s. 5
Section 35(2):	amended by 33, 1981, s. 21
Section 37(1a):	inserted by 33, 1981, s. 22
Section 39:	substituted by 33, 1981, s. 23
Section 46(2a):	inserted by 65, 1991, s. 6
Section 48(3) and (4):	inserted by 33, 1981, s. 24
Section 50:	amended by 33, 1981, s. 25
Section 52(2):	repealed by 33, 1981, s. 26
Section 52(4):	inserted by 65, 1991, s. 7
Section 56(1):	amended by 33, 1981, s. 27(a)
Section 56(2):	amended by 33, 1981, s. 27(b)
Section 58(3) and (4):	repealed by 33, 1981, s. 28
Section 59:	redesignated as s. 59(1) by 33, 1981, s. 29
Section 59(2):	inserted by 33, 1981, s. 29
Section 61(1):	amended by 33, 1981, s. 30
Section 64(1):	amended by 33, 1981, s. 31(a)
Section 64(3):	repealed by 33, 1981, s. 31(b)
Section 64(4):	amended by 33, 1981, s. 31(c)
Section 64(7):	inserted by 33, 1981, s. 31(d)
Section 64a:	inserted by 65, 1991, s. 8
Section 65(3):	substituted by 33, 1981, s. 32; 65, 1991, s. 9
Section 70(3):	substituted by 33, 1981, s. 33
Section 72a:	inserted by 33, 1981, s. 34
Section 73a:	inserted by 33, 1981, s. 35

Section 79a:	inserted by 33, 1981, s. 36
Section 80:	amended by 33, 1981, s. 37
Section 82(3):	inserted by 33, 1981, s. 38
Section 84(1):	substituted by 33, 1981, s. 39
Section 86:	amended by 33, 1981, s. 40; 93, 1987, s. 2
Section 87(1):	amended by 33, 1981, s. 41
Section 88(1):	amended by 33, 1981, s. 42(a)
Section 88(2):	amended by 33, 1981, s. 42(b)
Section 93(4):	amended by 33, 1981, s. 43
Section 94:	redesignated as s. 94(1) by 33, 1981, s. 44
Section 94(2):	inserted by 33, 1981, s. 44